

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHERMAN PEGROSS d/b/a
ROSENBLUM & FRANKEL
INVESTMENT COMPANY,

Plaintiff,

Case No. 12-13072

v.

Hon. John Corbett O'Meara

THE OAKLAND COUNTY
TREASURER, ANDREW MEISNER,
THE OAKLAND COUNTY TREASURER'S
OFFICE and THE COUNTY OF OAKLAND,

Defendants.

**ORDER GRANTING MOTION
FOR CANCELLATION OF LIS PENDENS**

Before the court is Defendants' motion for cancellation of lis pendens, which has been fully briefed. Pursuant to L.R. 7.1(f)(2), the court did not hear oral argument.

Plaintiff alleges that he has an interest in four properties in Oakland County, Michigan, that are the subject of this action. Plaintiff filed his complaint on July 12, 2012, along with a motion for preliminary injunction requesting that the court enjoin Defendants from selling the properties at a tax foreclosure sale. Finding that Plaintiff was unlikely to succeed on the merits and did not show irreparable harm,

the court denied Plaintiff's motion for injunctive relief. Plaintiff filed a motion for reconsideration, which was also denied by the court.

As the case proceeded, Plaintiff failed to respond to Defendants' discovery requests, and Defendants filed a motion to compel, which was granted. Shortly thereafter, about two weeks before the close of discovery, Plaintiff filed a motion for voluntary dismissal. The court denied the motion, finding that Defendants would be prejudiced by a without prejudice dismissal. Defendants then filed a motion for summary judgment, which the court granted, because "Plaintiff failed to set forth specific facts, evidence, and legal authority in support of his claims." Docket No. 38 at 1. Among other defects, the court determined that "Plaintiff has not presented evidence that he had an interest in the properties at issue." Id. at 5. Judgment was entered in favor of Defendants on October 11, 2013. Plaintiff has filed a notice of appeal.

Shortly before Plaintiff moved for voluntary dismissal, he recorded three notices of lis pendens with the Oakland County Register of Deeds Office that affect the properties at issue in this suit. See Defs.' Exs. B, C, D. Defendants seek to have these notices cancelled. Pursuant to M.C.L. 600.2725(2), "[i]f a plaintiff filing the notice [of lis pendens] unreasonably neglects to proceed in the action, or does not commence or prosecute the action in good faith, the court, in its

discretion, upon the application of any person aggrieved and upon such notice as may be directed or approved by it, may direct that a notice of the pendency of an action be canceled of record by a particular register of deeds, or by all the registers of deeds, with whom it is filed.” In addition, “a technically proper notice of lis pendens which meets all of the statutory requirements could be cancelled on equitable principles if in the discretion of the a trial judge the benefits of the notice are far outweighed by the damage it causes.” Altman v. City of Lansing, 115 Mich. App. 495, 507 (1982).

Here, Plaintiff failed to cooperate in discovery and was ordered to provide full and complete responses to Defendant’s discovery requests on May 1, 2013. Rather than comply, Plaintiff sought a voluntary dismissal without prejudice, stating only that “I am currently overwhelmed by this case and I can no longer defend myself against the Wealthy Oakland County attorneys in my current capacity.” Docket No. 29. The court denied Plaintiff’s motion for voluntary dismissal, finding that Plaintiff was not diligent in prosecuting the case and did not provide a reasonable explanation for seeking the dismissal without prejudice. Further, in response to Defendant’s motion for summary judgment, Plaintiff failed to present evidence in support of his claims, including his claim that he had an interest in the properties in dispute.

Plaintiff's failure to diligently prosecute this matter and his lack of basic evidence in support of his claims illustrates his lack of good faith in pursuing this case. Therefore, the court finds that the notices of lis pendens are properly cancelled under M.C.L. 600.2725(2) and principles of equity.

IT IS HEREBY ORDERED that Defendants' motion for cancellation of lis pendens is GRANTED.

IT IS FURTHER ORDERED that the Oakland County Register of Deeds shall cancel the lis pendens recorded by Plaintiff on the following properties: (1) 5127 Lake Bluff, West Bloomfield, MI 48323; (2) 7363 Creek View Ct., West Bloomfield, MI 48322; and (3) 1557 Bates St., Birmingham, MI 48009.

s/John Corbett O'Meara
United States District Judge

Date: April 8, 2014

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, April 8, 2014, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager